

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

13 UNITED STATES OF AMERICA,) 3:05-cr-00098-HDM
14 Plaintiff,) 3:16-cv-00255-HDM
15 vs.)
16 JOHNATHON ROBERTS,) ORDER
17 Defendant.)

18 On June 2, 2017, the court struck the defendant's pro se
19 motion to dismiss. (ECF No. 577). On June 15, 2017, defendant
20 filed a notice of appeal. (ECF No. 579). Although defendant does
21 not identify what order of the court he appeals, the court presumes
22 he is appealing its order of June 2, 2017. The court will deny
23 defendant a certificate of appealability for an appeal of that
24 order.

The standard for issuance of a certificate of appealability calls for a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c). The Supreme Court has interpreted 28

1 U.S.C. § 2253(c) as follows: "Where a district court has rejected
2 the constitutional claims on the merits, the showing required to
3 satisfy § 2253(c) is straightforward: The defendant must
4 demonstrate that reasonable jurists would find the district court's
5 assessment of the constitutional claims debatable or wrong." *Slack*
6 *v. McDaniel*, 529 U.S. 473, 484 (2000); see also *James v. Giles*, 221
7 F.3d 1074, 1077-79 (9th Cir. 2000). The Supreme Court further
8 illuminated the standard for issuance of a certificate of
9 appealability in *Miller-El v. Cockrell*, 537 U.S. 322 (2003). The
10 Court stated in that case:

11 We do not require petitioner to prove, before the
12 issuance of a COA, that some jurists would grant the
13 petition for habeas corpus. Indeed, a claim can be
14 debatable even though every jurist of reason might
15 agree, after the COA has been granted and the case
16 has received full consideration, that petitioner
17 will not prevail. As we stated in *Slack*, "[w]here a
district court has rejected the constitutional
claims on the merits, the showing required to
satisfy § 2253(c) is straightforward: The petitioner
must demonstrate that reasonable jurists would find
the district court's assessment of the
constitutional claims debatable or wrong."

18 *Miller-El*, 123 S.Ct. at 1040 (quoting *Slack*, 529 U.S. at 484).
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20 The court has considered the issues raised by defendant, with
21 respect to whether they satisfy the standard for issuance of a
22 certificate of appeal, and determines that none meet that standard.
23 The court therefore denies a certificate of appealability with
24 respect to the appeal of the court's order dated June 2, 2016.

25 IT IS SO ORDERED.
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27 DATED: This 20th day of June, 2017.
28



UNITED STATES DISTRICT JUDGE